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THE TURKISH CAPITULATIONS

SINCE the capture of Constantinople by the Turks in 1453 the relations of the Western Nations to the Ottoman Empire have been in many respects unique. These relations were determined and defined by decrees of the sultans, who granted large privileges and powers to Europeans resident on their soil. To these decrees in due time the name of Capitulations was given, apparently for the reason that they were divided into articles or chapters. They were personal grants, valid only for the life of the grantor. Hence they were renewed, often with modifications, on the accession of a new sultan. So we find many Capitulations made with France, England and other states. The earliest of these Capitulations, to which reference is now made for authority, is that of 1535, with Francis I. of France. It is more specific and formal than any previous decree. It remained practically in force for 300 years.

It is an interesting fact that concessions similar to those made in the Turkish Capitulations were granted to foreigners in the Orient prior to the establishment of the Ottoman power in the Levant. There is a tradition that ten centuries ago Arab traders were admitted to Canton with permission to erect a mosque, and have a *cadi* and their own laws;¹ and another that about the same time the califs of Egypt granted similar privileges to the merchants of Amalfi. It is certain that in the Latin colonies in the Greek Empire and on the coast of Africa and of Syria in the eleventh and twelfth centuries the traders from Amalfi and Venice carried with them their local laws and jurisdiction. After the crusades the Frankish barons holding eastern ports sought successfully to attract western trade by releasing it from many of the burdens imposed on it in Italy and France in the form of taxes, imposts, the *droit d'aubaine*, etc. The foreign community or colony was governed under the laws of its own land by a consul, or an official having some other title, but invested with the powers of a magistrate. In the Mussulman states of Northern Africa and the Levant, in the fourteenth century the foreigners of each nation were often gathered in one large establishment with their shops, their chapel and their consular residence. At the same period in the Greek Empire and in Chris-

¹ Travers Twiss in *Revue de Droit International*, 1893, p. 207. Pardessus, *Lois Maritimes*, II., p. cxxxviii.

tian states in Syria the foreigners received sometimes the concession of a whole street or even of a quarter of the city for their churches, residences, mills and baths, and in some cases of lands adjacent to the city. But in all these Oriental states the western merchants had the privilege of extraterritorial jurisdiction. These concessions seem to have been due to a recognition of the wide difference between the eastern and the western civilization, laws, customs and manners, and to have been deemed conducive to the harmonious life of the natives and the foreigners. They were a natural outgrowth of the conditions in which these peoples of diverse origins found themselves and were regarded as no more beneficial to the foreigners than to the natives.

Pradier Fodéré, who gave special study to this subject, thinks that the Mohammedans were very ready to grant large privileges to the foreign merchants because of their disinclination to leave their own country for the purposes of trade, and because of their lack of experience in navigation, and their need of attracting foreigners to make use of their extended coast, their fine harbors and their abundant products.¹

As Mohammed II., when he captured Constantinople in 1453, was familiar with these usages, which had been followed in Moslem and Christian seaports of the Levant for three or four centuries, and which on the whole had contributed to the harmony between the natives and the foreigners, it is not surprising that he decided to grant to the foreign residents in his domain substantially the same privileges which they had previously enjoyed. It afforded him the simplest and easiest method of administration. It was for his convenience quite as much as for theirs that he left large liberty to the conquered Greeks, and soon confirmed to the Greeks and Venetians and other nations the privileges they had enjoyed under the old Empire. He was inspired by real statesmanship. It may well be doubted whether he supposed that he was exercising special generosity to the foreign powers.

When Francis I. of France found himself engaged in his great conflict with the Emperor Charles V., he threw aside the scruples which Christian sovereigns had generally entertained against forming an alliance with the Moslems, and sought the friendship of the Sultan Suleiman, who was also opposing the German Emperor. One of the results of this friendship was the granting by the Sultan of what is generally called the First Capitulation. Unhappily the text of this important document is lost. But as we have later Capitulations, which we have every reason to suppose do not differ es-

¹ *Revue de Droit International*, 1869, p. 119.

entially from the first, we are reasonably sure of its import. It seems to have been in form, not a treaty, but a unilateral document, a grant or concession by the Sultan to his friend, the King of France. It permitted to French subjects the rights of residence, trade and local jurisdiction which have been since 1535 enjoyed by them. The Capitulation which is now generally cited as the basis of the rights claimed by foreigners is that of 1740. Since by Capitulations and later by treaties other nations have received the same rights as "the Franks," all nations refer back to the Capitulation of 1740 to sustain their claims.

The substance of the concessions in the chief Capitulations was as follows: The Franks were to have the liberty to travel in all parts of the Ottoman Empire. They were to carry on trade according to their own laws and usages. They were to have liberty of worship. They were to be free from all duties save customs duties. They were to enjoy inviolability of domicile. Their ambassadors and consuls were to have extraterritorial jurisdiction over them. Even if they committed a crime, they were to be arrested by an Ottoman official only in the presence of a consular or diplomatic official of their own country. The Ottoman officers, if asked by a consular or diplomatic officer to aid in the arrest of a French subject, must render such service. The Franks had the full right of making wills. If they died intestate in Turkey, their own consul must take possession of their property and remit it to their heirs. In fact, the Franks and other nations at last had *imperia in imperio*.

Naturally enough other western powers soon sought to secure the same privileges as France. In 1579 Queen Elizabeth endeavored to secure the favor of the Sultan by reminding him that like him she and her subjects were opposed to the worship of images. This remarkable attempt to show a resemblance between Protestantism and Mohammedanism was not immediately successful in the face of French opposition. But in 1583 the Queen did succeed in establishing relations with the Sultan and appointed William Harebone ambassador. The Capitulation was afterwards many times renewed. The Netherlands received a Capitulation in 1609, and Austria in 1615.

In 1673 France obtained a new power, namely, the exclusive right of protecting under her flag the subjects of sovereigns who had received no Capitulations. This gave her prestige in Western Europe, and placed several Powers under obligations to her. But in 1675 England after a vigorous effort succeeded in depriving her of the exclusive right of protection of other nations, so that some states, Genoa for instance, had the option of English or French

protection. In 1718 Austria got permission for Genoa and Leghorn to use her flag. The smaller states were for a long time glad to secure the protection of one of the strong Powers.

Perhaps no concession made by the Capitulations to foreign powers has been more abused than the grant of this right of protection. We are all indebted to M. Francis Rey for the thorough study he has made of this subject, and I borrow mainly from him the statements which follow.¹ The French, English and Romans seem to have been especially guilty of abuses of the privilege of taking foreigners under their protection. They sold to native Greeks and Armenians the privilege of protection by a document which exempted them from paying duties on goods imported. Many of these became rich by this advantage, and were allowed to make a transfer of their privilege for a consideration. Ambassadors were allowed to have a large number of dragomans, to each of whom they gave a *barat*, which secured for them valuable exemptions. The ambassadors came to dispose of these appointments or barats for sums ranging from 2500 to 4000 piasters. One of the French ambassadors, it is stated in an official report, received more than 400,000 francs from this source. The English ambassador is said to have received £2000 to £3000 income from the same source. The ambassadors presumed to bestow this *barat* for life. They used to bribe officials even in the Sultan's household. They went so far as to issue patents of protection to whole families of Greek or Armenian subjects of the Sultan.

Russia and Austria shamefully abused this right of protection for political ends. Rivals in seeking influence in Moldavia and Wallachia in 1780 and 1782, their consuls competed with each other in gratuitously granting patents of protection to the natives. At the close of the last century Austria had by this process more than 200,000 subjects in Moldavia, and 60,000 in Wallachia. But these last were afterwards made Russians by changing the patents, when the Russian influence became preponderant in Wallachia.

In 1806 in order to embarrass Russia Napoleon put an end to the abuse by French ambassadors of the right of issuing the *barat* to any persons but the dragomans. And Turkey succeeded in persuading most of the foreign Powers to imitate his example. But this did not prevent Russia and Austria and Great Britain, through their consuls, taking large numbers of Turkish rajas under their protection by one pretence or another. In 1808 it is said that Russia had 120,000 Greek subjects of the Sultan, Austria a large number

¹ *La Protection Diplomatique et Consulaire dans les Échelles du Levant et de Barbarie*, par Francis Rey. Paris, 1899.

of Dalmatians and Croats, and Great Britain many Indians and Maltese registered as their *protégés*. Of course they formed lawless crowds claiming exemption from police supervision. Some of the *protégés* were rich merchants, whose acts caused diplomatic conflicts. It is not strange, therefore, that in 1869 the Sultan issued an *iradé* forbidding the naturalization of his subjects under a foreign government unless they had previously obtained his consent. Surely he had been imposed on long enough.

The treaties of this century between Turkey and western Powers are all based on the Capitulations, notably those of 1740. Of late years some important changes have been made. The most noteworthy are these: Down to the nineteenth century foreigners could not hold real property except under borrowed names. Since 1867 they have been allowed to hold it. Duties on imports were formerly only three per cent. Now they are eight per cent., but can be raised only by treaty. Since 1868 the inviolability of the domicile of a foreigner is limited to residences within nine hours' journey of a consular post. Questions of real property are determined in an Ottoman court. Religious freedom is confirmed in all the treaties.

Naturally enough Turkey has made repeated efforts to annul the Capitulations. She tried to do this at the Paris Congress of 1856, and again in 1862. But the Powers generally have been unwilling to yield to her desire. Germany, whose policy for some years has been to secure the favor of the Sultan, renounced the Capitulations ten years ago, but under the most favored nation clause in her treaties retains the same privileges as others.

All the Powers except the United States have surrendered in large degree their extritorial jurisdiction over their subjects, though the consul of the subject accused of crime attends his trial, and if injustice is threatened, his case is made a matter of diplomatic consideration.

Our insistence on extritorial jurisdiction over our citizens accused of crime now results in the miscarriage of justice. For the Turkish government declines to furnish witnesses, and allows the culprit to escape. It maintains that we have no right to exercise the jurisdiction we claim. It affirms that our copy of the treaty is not correct. There is great need of the adjustment of the question by the negotiation of a new treaty.

We have also a constant source of difficulty with Turkey in respect to naturalized Armenians. Many come to this country and take our naturalization papers and return home as American citizens. But the Sultan recognizes no naturalization since 1869, unless it

has been made by his consent. The British avoid the trouble we have by declaring in writing on the passport of every Turkish subject naturalized in Great Britain that it is not valid on return of the bearer to Turkey.¹

Until the government of Turkey undergoes important improvements, and especially until justice is more impartially administered by her courts, it will not be prudent for the western Powers to make exactly such treaties with her as they may properly make with each other. The difference between the customs and laws of the Mohammedan nations on the one hand and those of the Christian nations on the other is so marked that the relations between the two must long be determined by treaties breathing something of the spirit of the old Capitulations.

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¹ This is in accordance with the following provision in the British Naturalization Act of 1870. "An alien to whom a certificate of naturalization is granted . . . shall not, within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect."